

Remarks

Applicant respectfully requests further examination and reconsideration in view of the above amendment and the arguments set forth fully below. There is no new matter contained in the claims as amended. The undersigned gratefully thanks the examiner for entering Applicant's submission made on December 19, 2006.

Claim Objections

Claims 19, 22 and 24-27 were objected to because in claim 19 the limitation "outwardly extending protrusion" should have been – ridge– to be consistent with the terminology used in the description. Accordingly, the Applicant currently amends claim 19 to cure the inconsistency.

Rejections Under 35 U.S.C. § 103(a)

Claims 1, 3-4, 6-9, 19, 22 and 24-27 were rejected under 35 U.S.C. § 103(a) as being anticipated by United States Patent No. 5,992,617 to Couch et al (Hereinafter "Couch"). Applicants respectfully traverse this rejection because Couch would not have made it obvious to one skilled in the art at the time of the invention, to make a cosmetic brush with all the claim limitations present in the disclosed invention as currently amended.

One basic criteria to establish a prima facie case of obviousness is that the prior art reference must teach or suggest all the claim limitations of the present invention. Here, the Applicant points out that Couch does not disclose the limitations present in claims 1 and 19. Specifically, Couch does not disclose "at least one endcap . . . wherein the at least one endcap has at least one ridge positioned around the circumference of the endcap." The Examiner points to the embodiment disclosed in Couch in Figure 7 as evidence that Couch contains this limitation, but mis-characterizes its structure. The Examiner explains that "the outer periphery of foam 70 which is positioned around the circumference of the endcap 72" is akin to the "at least one endcap . . . wherein the at least one endcap has at least one ridge positioned around the circumference of the endcap" of the Applicant's invention as claimed in Claim 19. However, Couch discloses an "insert 70 [which] includes a layer of foam 72, which has a smaller

circumference, on its underside". In contrast with Couch's "layer of foam with a smaller circumference", the Applicant's endcap, as claimed in Claim 19, has a ridge, which implicitly has a larger circumference than the rest of the endcap. Both the layer of foam and the ridge are inserted into an enclosure, but since Couch's "layer" is smaller than the "insert" and the Applicant's "ridge" is larger than the "endcap", Couch teaches away from the Applicant's claimed invention and therefore does not render the Applicant's invention obvious.

Claims 1 and 19 both contain the limitation that the apparatus contain "at least one endcap . . . wherein the at least one endcap has at least one ridge positioned around the circumference of the endcap", and claims 3-4, 6-9, 22 and 24-27 contain the limitation by implication. Therefore, the Applicant respectfully argues that claims 1, 3-4, 6-9, 19, 22 and 24-27 are allowable over Couch.

Conclusion

Claims 2, 5, 10-18, 20-23, 28-45 and 50 have been cancelled. Claims 1, 19 and 46 are currently being amended. Therefore, claims 1, 3-4, 6-9, 19, 24-27 and 46-49 are pending.

For the reasons given above, applicants respectfully submit that the claims, as amended, are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
HAVERSTOCK & OWENS LLP

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CERTIFICATE OF MAILING (37 C.F.R. § 1.6(a))
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